

MICHAEL C. GHIZZONI, COUNTY COUNSEL  
MARY PAT BARRY, SR. DEPUTY (Bar No. 148354)  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2983  
E-mail: mpbarry@co.santa-barbara.ca.us

Attorneys for Defendants  
COUNTY OF SANTA BARBARA,  
ROCKWELL ELLIS, JOHN LANE,  
and RICHARD ZEPF in  
U.S.D.C. Case No. 2:14-cv-04149-BRO (SSx)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No: 2:14-cr-00208-BRO

Plaintiff,

v.

**OPPOSITION OF INTERESTED  
PARTY COUNTY OF SANTA  
BARBARA TO DEFENDANT  
JOHNSON'S MOTION FOR  
ORDER ALLOWING ACCESS  
TO WITNESSES;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT; DECLARATION OF  
MARY PAT BARRY**

CHRISTOPHER JOHNSON and  
ROBERT KIRSCH,  
Defendants.

Hearing Date: 06/01/15  
Time: 9:00 a.m.

Judge: Hon. Beverly Reid O'Connell  
Courtroom: 14 – Spring Street Floor

TO THE HONORABLE COURT AND ALL INTERESTED PARTIES:

The County of Santa Barbara provides the following opposition to  
Defendant Christopher Johnson's Motion for Order Allowing Access to  
Witnesses (Motion).

## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

The California State Bar's Rule of Professional Conduct exist to protect the public and to promote respect and confidence in the legal profession. When those rules are disregarded, the integrity of the judicial system is compromised. The County of Santa Barbara expected Christopher Johnson's counsel to adhere to the requirements of the Rules before engaging in communication with County employees who constitute parties under Rule 2-100(2)(B). Protection of attorney-client communications is critical to the administration of justice. The circumstances here support requiring Johnson's counsel to comply with the Rules, whether in the role of Johnson's criminal or civil counsel, before contacting County employees.

### STATEMENT OF FACTS

Christopher Johnson (Johnson), a former County of Santa Barbara Sheriff's Office (SBSO) custody deputy working in the County of Santa Barbara's Main Jail, stands indicted by a federal grand jury for assaulting Charles Owens while he was an inmate at the Main Jail, and thereby depriving Owens of his right under the U.S. Constitution not to be deprived of liberty without due process of law, a violation of 18 U.S.C. § 242, 2. Johnson also stands indicted for obstructing justice by preparing and submitting a false report concerning the use of force incident, a violation of 18 U.S.C. § 1512(b)(3).

Charles Owens has filed a civil action in this Court against Johnson, Robert Kirsch (Kirsch), the County of Santa Barbara (County), and current SBSO employees Deputy Rockwell Ellis (Ellis) and Sgt. Richard Zepf and former SBSO custody deputy John Lane. That matter is set for trial on January 5, 2016. The civil action alleges, among other things, violation of Owens's First, Fourth and Fourteenth Amendment rights by Johnson and the County. Owens's claims include excessive force claims against Johnson, Kirsch and Ellis. Owens

1 alleges liability against the County on grounds that Johnson acted pursuant to  
2 County policy, custom or practice in violating Owens's rights or on grounds that  
3 the County failed to train its employees to avoid a violating inmates'  
4 constitutional rights.

5 Johnson filed a cross-claim against the County in the civil action.

6 Johnson's counsel in the civil action is Robert Rabe of Stone Busailah,  
7 LLP. Santa Barbara County Counsel is counsel of record for the County,  
8 Rockwell Ellis, John Lane, and Richard Zepf. *See* Declaration of Mary Pat  
9 Barry (Barry Decl.), ¶ 1.

10 When Owens reported the alleged use of force to the SBSO, criminal and  
11 administrative investigations were conducted. During the criminal investigation,  
12 SBSO employees Janette Reynoso and Dalyn Watkins were interviewed , along  
13 with several other SBSO employees. Those interviews were audiotaped.

14 The civil action is in its discovery stage. Owens's counsel has deposed  
15 Custody Deputies Janette Reynoso and Timothy May, Sr. Custody Deputy  
16 Bobby Williamson, Deputy Rockwell Ellis, and Dalyne Watkins. An attorney  
17 for Johnson was present at all of those depositions. On May 20, 2015, Johnson's  
18 counsel served notice of the deposition of SBSO Sgt. Ronald Osborne. Sgt.  
19 Osborne was served with a Rule 45 subpoena commanding his presence on June  
20 4, 2015 at 10:00 a.m. Barry Decl. ¶¶ 4, 5, 11, 15.

21 On or about April 15, 2015, an individual representing himself as an  
22 attorney contacted one or more SBSO employees, including Janette Reynoso,  
23 and sought to interview those employees. Johnson's Motion includes a  
24 Declaration of Hernandez "Hank" Lobo establishing that Mr. Lobo was retained  
25 by Mr. Rabe's firm to interview witnesses in the Johnson criminal case. Mr.  
26 Rabe did not contact Santa Barbara County Counsel to obtain consent for those  
27 communications. Barry Decl. ¶ 9.  
28

Johnson states in his Motion that his attorney needs to interview SBSO percipient witness and potential witness employees regarding: 1) the events surrounding the alleged use of excessive force on June 17, 2013; 2) use of force training and other training provided to Johnson by the SBSO; and 3) Johnson's character. Motion, p. 3:16-21.

## ARGUMENT

**I. TO ENSURE THE PROPER FUNCTIONING OF THE ADMINISTRATION OF JUSTICE AND THE INTEGRITY OF THE COURT, DEFENDANT JOHNSON'S MOTION SHOULD BE DENIED. THE COURT SHOULD REQUIRE JOHNSON'S COUNSEL TO COMPLY WITH RULE 2-100 OF THE CALIFORNIA STATE BAR RULES OF PROFESSIONAL CONDUCT.**

**A. CRIMINAL TRIAL COUNSEL MUST COMPLY WITH THE RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA.**

Local Civil Rule 83-3.1.2 of the United States District Court for the Central District of California requires every attorney to comply with the standards of professional conduct contained in the Rules of Professional Conduct of the State Bar of California. The United States District Court for the Central District of California has adopted those rules as the standards of professional conduct in the Central District.

Through that adoption, the United States District Court for the Central District seeks "to maintain the effective administration of justice and the integrity of the Court." L.R. 83-3.1.2. The Central District's focus on integrity applies in criminal court as well. Local Criminal Rule 57-1 provides that when the Local Civil Rules of the Central District of California are applicable directly or by analogy, they govern the conduct of criminal proceedings before the

1 District Court unless otherwise specified. Therefore, Local Civil Rule 83-3.1.2 is  
 2 applicable to criminal proceedings in the Central District and attorneys in  
 3 criminal cases must comply with the applicable standards of professional  
 4 conduct.

5 **B. JOHNSON’S CRIMINAL TRIAL COUNSEL MUST**  
 6 **COMPLY WITH RULE 2-100 WHEN SEEKING TO**  
 7 **DIRECTLY OR INDIRECTLY CONTACT A COUNTY**  
 8 **EMPLOYEE WHO IS A “PARTY” UNDER RULE 2-100.**

9 Johnson’s Motion concerns ex parte contacts with County of Santa  
 10 Barbara employees. Rule of Professional Conduct 2-100 addresses  
 11 communication with a represented party and, in pertinent part, states as follows:

12 (A) While representing a client, a member shall not  
 13 communicate directly or indirectly about the subject of the  
 14 representation with a party the member knows to be  
 15 represented by another lawyer in the matter, unless the  
 16 member has the consent of the other lawyer.

17 (B) For purposes of this rule, a “party” includes:

18 (1) . . .

19 (2) An association member or an employee of  
 20 an association, corporation, or partnership, if the  
 21 subject of the communication is any act or  
 22 omission of such person in connection with the  
 23 matter which may be binding upon or imputed to  
 24 the organization for purposes of civil or criminal  
 25 liability or whose statement may constitute an  
 26 admission on the part of the organization.

27 Rule 2-100 applies in both criminal and civil cases. *Triple A Machine*  
 28 *Shop, Inc. v. State of California*, 213 Cal.App.3d 131,138 n.4, 139 (1989)

1 [referring to former Rule 7-103, which was replaced by Rule 2-100 on May 27,  
2 1989].

3 Rule 2-100 protects the integrity of the court because it demands behavior  
4 consistent with legal ethics. In *United States v. Talao*, 222 F.3d 1133 (9<sup>th</sup> Cir.  
5 2000), the Ninth Circuit stated as follows:

6 In determining the applicability of Rule 2-100, we must be  
7 mindful of the fundamental reasons behind the venerable  
8 rule in legal ethics prohibiting ex parte contacts with  
9 represented parties. The rule exists in order to ““preserve . .  
10 . the attorney-client relationship and the proper functioning  
11 of the administration of justice.”” It is a rule governing  
12 attorney conduct and the duties of attorneys, and does not  
13 create a right in a party not to be contacted by opposing  
14 counsel. Its objective is to establish ethical standards that  
15 foster the internal integrity of and public confidence in the  
16 judicial system.

17 *Talao*, 222 F.3d at 1138 (quoting *Mills Land and Water Co. v. Golden West*  
18 *Refining Co.*, 186 Cal.App.3d 116, 230 Cal.Rptr. 461 (1986), quoting *Mitton v.*  
19 *State Bar*, 71 Cal.2d 525, 78 Cal.Rptr. 649, 654, 455 P.2d 753 (1969); *Triple A*  
20 *Machine Shop, Inc. v. State of California*, 213 Cal.App.3d 131 (1989) (“ex parte  
21 contact intrudes upon the function of opposing counsel and impedes his or her  
22 ability to properly represent the client.”).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1           1.     Johnson seeks to interview County employees who  
 2                     are already exposed to or are potentially exposed to civil  
 3                     liability. He seeks to interview County employees whose acts  
 4                     or omissions concern the subject matter of Johnson's use of  
 5                     force on June 17, 2013. All of these employees are parties  
 6                     for purposes of Rule 2-100(B)(2).

7           Rule 2-100 applies to employees of an organization. In *San Francisco*  
 8     *Unified School Dist. Ex rel Contreras v. First Student, Inc.*, 213 Cal.App.4<sup>th</sup>  
 9     1212, 153 Cal.Rptr.3d 583 (2013), the court addressed whether employees of a  
 10    bus company were parties under the acts or omissions clause of subdivision  
 11    (B)(2) of Rule 2-100. *San Francisco Unified School Dist. ex rel Contreras*, 213  
 12    Cal.App.4<sup>th</sup> 1212, 1231. The court referred to California tort and evidence law,  
 13    stating “[i]t is well established under California tort law that the conduct of an  
 14    employee acting within the scope of his employment is imputed to the employer  
 15    under the doctrine of respondeat superior.” *Id.*

16           The court then concluded that a bus mechanic was potentially a party  
 17    within the meaning of Rule 2-100 where the subject matter of the lawsuit was  
 18    his employer's allegedly inadequate repair and maintenance of its buses. The  
 19    court reasoned: “Thus, if the subject matter of a communication with [the  
 20    mechanic] was his acts or omissions while working as an FSI bus mechanic, the  
 21    communication might well have been prohibited by rule 2-100.” *Id.* at 1232.

22           Here, the subject matter of the civil lawsuit, in pertinent part, is the  
 23    adequacy of SBSO's training of custody deputies in use of force and related  
 24    matters. It is also, particularly as to Janette Reynoso and Rockwell Ellis, and  
 25    every other SBSO employee present on June 17, 2013, both before and after  
 26    Johnson's use of force, the acts or omissions of those employees while working  
 27    as custody deputies. Communication with these employees without compliance  
 28    with Rule 2-100 is improper and should be prohibited.



2. Johnson seeks to interview County employees whose statements regarding SBSO training could be imputed to the County and constitute admissions on the part of the County. These employees are parties under Rule 2-100(B)(2).

A public entity's employees have been held to qualify as "represented parties" under Rule 2-100(B)(2) because their statements can constitute admissions on the part of their employer in federal court. *United States Sierra Pacific Industries*, 857 F.Supp.2d 975, 980 (E.D. Cal. Nov. 18, 2011); *Guthrey v. California Dep't of Corrections and Rehabilitation*, Case No. 1:10-cv-02177-AWI-BAM, 2012 U.S. Dist. LEXIS 110862, \*16-17 (E.D. Cal. August 7, 2012). Johnson seeks to interview SBSO employees regarding training in use of force and related matters. Statements of these employees could constitute admissions of the County in the civil case, which concerns SBSO's training in use of force and related matters. These employees are therefore represented parties under Rule 2-100(B)(2) and Johnson's counsel must comply with Rule 2-100 before contacting these employees.

**C. JOHNSON'S ARGUMENT FAILS TO  
RECOGNIZE THAT DEFENSE ACCESS TO WITNESSES  
MAY BE LIMITED WHEN JUSTIFIED BY COMPELLING  
CIRCUMSTANCES.**

Johnson's Motion fails to discuss the complex circumstances giving rise to the issue presented here. Instead, Johnson appears to believe that if he uses bold font for the word "criminal," (Motion, p. 3:26; p. 4:16, p. 6:10) he need not discuss the issue of the County's and County employees' position in the civil action. Johnson cites no authority for his blanket statement that "[i]t should make no difference that the directive not to speak with defense counsel and/or their investigator may come from the County Counsel whose office is defending Santa Barbara County in a related civil action." Motion, p. 6:10-13.



1 To support his position, Johnson relies primarily on *Gregory v. United*  
 2 *States*, 369 F.2d 185 (D.C. Cir. 1966). *Gregory* concerned an appeal of a first  
 3 degree murder conviction. At trial, identification of the liquor store robber  
 4 responsible for the murder was the key issue. *Gregory*, 369 F.2d at 187. The  
 5 prosecutor in the case advised several eye witnesses to the robbery and murder  
 6 not to speak to anyone unless he were present. *Id.* The court determined that the  
 7 prosecutor's advice to the eyewitnesses frustrated defense counsel's effort to  
 8 learn what the eye witnesses were to testify to or how certain they were in their  
 9 testimony and therefore denied the appellant a fair trial. *Id.* at 189.

10 In this case, Mr. Rabe has presumably received through criminal  
 11 discovery the audiotaped interviews of the only two current SBSO employees  
 12 who witnessed any part of the alleged use of force by Johnson in the Main Jail's  
 13 bus hallway, namely Janette Reynoso and Dalyne Watkins. Mr. Rabe sat  
 14 through the deposition of Janette Reynoso and asked her questions. His associate  
 15 sat through the deposition of Dalyne Watkins but had no questions for her. See  
 16 Declaration of Mary Pat Barry (Barry Decl.), ¶¶ 4, 5. Johnson's criminal defense  
 17 counsel, unlike appellant in *Gregory*, cannot claim to not know what Reynoso  
 18 and Watkins would testify to and how certain they are in their testimony.

19 Significantly, a criminal defendant's right to access to witnesses is not  
 20 absolute. Where there is a fairly compelling justification, the government may  
 21 interfere with defense access to witnesses. *United States v. Black*, 767 F.2d  
 22 1334, 1337(9<sup>th</sup> Cir. 1985). Acceptable interference may occur, for example,  
 23 when a witness is in protective custody. In that circumstance, the trial court has  
 24 the duty to ensure that defense counsel has access to the witness under  
 25 controlled arrangements. *United States v. Walton*, 602 F.2d 1176, 1180 (4<sup>th</sup> Cir.  
 26 1979). "The better procedure is to allow the defense counsel to hear directly  
 27 from the witness whether he would be willing to talk to the defense attorney,  
 28 either alone or in the presence of his attorney." *Id.*

1 Compelling circumstances exist under the circumstances of this criminal  
 2 case and Owens's civil actions to warrant a balancing of interests and requiring  
 3 compliance with Rule 2-100. If the Court decides that Rule 2-100 does not apply  
 4 here, County requests that the Court make clear that County Counsel may advise  
 5 SBSO employees of their right to decline Johnson's request for an interview.  
 6 This is a correct statement of the law and not improper. *Black*, 767 F.2d at 1338.

### 7 CONCLUSION

8 For the reasons set forth above, County of Santa Barbara respectfully  
 9 requests that this Court deny Johnson's Motion and order Johnson's counsel to  
 10 comply with California Rules of Professional Conduct 2-100 prior to directly or  
 11 indirectly communicating with County of Santa Barbara Sheriff's Office  
 12 employees about the subject matter of Christopher Johnson's alleged use of  
 13 excessive force against Charles Owens and training in use of force and other  
 14 relevant training provided by the Santa Barbara County Sheriff's Office to its  
 15 current and former employees, including Johnson.

16 Dated: May 27, 2015

MICHAEL C. GHIZZONI  
 COUNTY COUNSEL

19 By: /s/ - Mary Pat Barry  
 20 Mary Pat Barry  
 21 Sr. Deputy County Counsel  
 22 Attorneys for Defendants  
 23 COUNTY OF SANTA BARBARA,  
 24 ROCKWELL ELLIS, JOHN LANE,  
 25 and RICHARD ZEPF in U.S.D.C. Case  
 26 No. 2:14-cv-04149-BRO (SSx)

## **DECLARATION**

1 MICHAEL C. GHIZZONI, COUNTY COUNSEL  
2 MARY PAT BARRY, SR. DEPUTY (Bar No. 148354)  
3 COUNTY OF SANTA BARBARA  
4 105 E. Anapamu St., Suite 201  
5 Santa Barbara, CA 93101  
6 (805) 568-2950 / FAX: (805) 568-2983  
7 E-mail: mpbarry@co.santa-barbara.ca.us

8 Attorneys for Defendants  
9 COUNTY OF SANTA BARBARA,  
10 ROCKWELL ELLIS, JOHN LANE,  
11 and RICHARD ZEPF in U.S.D.C.  
12 Case No. 2:14-cv-04149-BRO (SSx)

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

Case No: 2:14-cr-00208-BRO

16 Plaintiff,

**DECLARATION OF MARY PAT  
BARRY**

17 vs.

18 CHRISTOPHER JOHNSON and  
19 ROBERT KIRSCH,

20 Defendants.

21 **DECLARATION OF MARY PAT BARRY**

22 I, Mary Pat Barry, declare as follows:

23 **DECLARATION OF MARY PAT BARRY**

1. I am one of the attorneys of record for Defendants COUNTY OF SANTA BARBARA, ROCKWELL ELLIS, JOHN LANE, and RICHARD ZEPF in the civil action entitled Charles Owens v. County of Santa Barbara, Christopher Johnson, Robert Kirsch, et al., United States District Court Case No. 2:14-cv-04149-BRO (SSx); and for Defendant County of Santa Barbara in the related cross-claims entitled Christopher Johnson v. County of Santa Barbara and Robert Kirsch v. County of Santa Barbara. If called as a witness, I could and would competently testify to the matters set forth herein of my own personal knowledge.

2. The County of Santa Barbara (County) is being sued by former Santa Barbara County Jail inmate Charles Owens (Owens) for, among other things, the alleged use of excessive force against him by former County employees Christopher Johnson (Johnson) and Robert Kirsch (Kirsch). Owens's claims allege that Johnson and Kirsch's actions were consistent with a Santa Barbara Sheriff's Office (SBSO) policy, custom or practice of using excessive force against inmates or that Johnson and Kirsch's actions evidence that the County inadequately trained its custody deputies to handle the usual and recurring situations they must deal with and that the County was deliberately indifferent to the obvious consequences of that failure to train and thus caused Owens's injuries.

3. Based on information he learned during discovery, Owens recently filed a Second Amended Complaint in his civil action, which added Rockwell Ellis (Ellis) and John Lane (Lane) as defendants. Ellis is a current SBSO deputy; Lane is a former SBSO custody deputy. Santa Barbara County Counsel is counsel of record for Ellis and Lane. Owens makes allegations against eight other County employees identified as Doe defendants.

4. SBSO Custody Deputy Janette Reynoso (Reynoso) is a witness to some of the actions of Johnson related to his alleged use of excessive force

1 against Owens. Reynoso was deposed in the civil case on April 6, 2015. I  
2 represented Reynoso at her deposition. Johnson's counsel, Robert Rabe, was  
3 present for the deposition and asked Reynoso approximately seven questions,  
4 including a question about her SBSO training in the use of force.

5 5. SBSO civilian employee Dalyne Watkins is a witness to some of  
6 the actions of Johnson related to his alleged use of excessive force. Watkins was  
7 deposed in the civil case on April 7, 2015. I represented Watkins at her  
8 deposition. Johnson's counsel, Stephen Chulak, was present for the deposition  
9 and asked Watkins no questions.

10 6. Johnson states that he "needs to interview [SBSO] employees who  
11 are potential percipient witnesses to the events surrounding the incident that  
12 occurred on June 17, 2013." Motion, p. 3:16-18. Aside from Johnson, Kirsch,  
13 and Owens, Reynoso and Watkins are the only current County employees who  
14 can be described as "percipient witnesses" to Johnson's alleged excessive use of  
15 force.

16 7. Johnson also states that he needs to interview "SBCSO employees  
17 who are potential witnesses to 'use of force' and other relevant training provided  
18 to Christopher Johnson by the SBCSO." Motion, p. 3:19-20. Training in use of  
19 force and related matters is the subject matter of the allegations against the  
20 County in Mr. Owens's civil lawsuit.

21 8. During Reynoso's deposition, Plaintiff's counsel's questioning  
22 suggested that Plaintiff might seek to name Reynoso as a defendant in the civil  
23 lawsuit on a "failure to intercede" theory of liability.

24 9. The week after her deposition, I learned that Reynoso had been  
25 contacted by an "attorney" who wished to speak to her. I discovered that the  
26 "attorney" was a private investigator named Hank Lobo who sought to question  
27 Reynoso. I did not know the subject matter of the intended questioning, but  
28 suspected it could be related to the Owens case.

DECLARATION OF MARY PAT BARRY

10. I am aware that California Rule of Professional Conduct 2-100 addresses a member's direct or indirect communication with a party the member knows is represented by another lawyer in a matter, unless the member has the consent of the other lawyer. The U.S. District Court for the Central District of California has adopted the Rules of Professional Conduct of the State Bar of California as the standards of professional conduct. Local Rule 83-3.1.2.

11. On April 16, 2015, I attended the depositions of SBSO employees Bobby Williamson, Rockwell Ellis (a named defendant in the civil action); and of California Highway Patrol officer Kevin Taulbee. I represented Mr. Williamson and am counsel of record for Rockwell Ellis in the civil action. At the conclusion of the final deposition that day, as I was walking out of the room, Mr. Rabe sought my attention to state that he had an investigator who was contacting SBSO employees. This was the first time Mr. Rabe ever mentioned the matter. Mr. Rabe's declaration filed with the Motion states that it was his "intention" to meet with me to discuss the situation and "inform [me] such action by the Santa Barbara County Sheriff's office violated Christopher Johnson's Constitutional Rights because it interfered with his ability to secure witness testimony." That may have been Mr. Rabe's "intention," however he never stated any of those things. When he briefly raised the subject of a private investigator contacting SBSO employees, I stated to him that I considered direct contacts by him or his investigator with SBSO employees regarding the Owens matter to be contacts with a party; that his investigator's direct contact with SBSO employees without the consent of the County's lawyer was improper; and that any desire to communicate with County SBSO employees about the subject matter of the Owens case should be addressed to a County lawyer. I then departed the deposition.

12. Mr. Rabe did not respond; did not ask to discuss the matter; and never sought to meet and confer regarding the matter.

DECLARATION OF MARY PAT BARRY



13. I heard nothing more about the issue until I received a letter from Mr. Rabe almost exactly one month later. That letter was sent via e-mail at 5:31 p.m. on Friday, May 15, 2015. Neither Mr. Rabe's e-mail nor his attached letter requested a conference or response from me of any kind. His letter concluded with the statement "We trust that, after reviewing the relevant authorities, our investigator will have no further problems setting up meetings with witnesses who may desire to speak with us and possibly assist in the defense in the **criminal** matter." Motion, Ex. 2. Mr. Rabe did not follow-up with any other communication. Mr. Rabe states in his declaration at paragraph 5 that his May 15, 2015 letter (e-mailed Friday at 5:31 p.m.) was "an attempt to resolve this situation without involving the Court." Presumably, he knew that he intended to involve the Court during his appearance at the criminal case status conference at 9:00 a.m. the following Monday. This raises the question of when he expected to "resolve this situation" between 5:31 p.m. Friday night May 15, 2015 and 9:00 a.m. on Monday, May 18, 2015 when he was scheduled to appear in court.

14. Having made no effort that I am aware of to "resolve the issue" prior to his court appearance the following Monday, Mr. Rabe appeared for a status conference in this case and raised the issue of interviews of law enforcement witnesses. The Court's order following that hearing orders counsel to inform the Court if a resolution occurs. Mr. Rabe made no effort to contact me after that hearing to attempt to resolve the issue. Rather, I learned of the events at the status conference from the Assistant U.S. Attorney, Lawrence S. Middleton, through a telephone call on Tuesday, May 19, 2015.

15. On May 21, 2015, Mr. Rabe served SBSO Sgt. Ronald Osborne with a deposition subpoena to take his deposition on June 4, 2015 at 10:00 a.m. I will represent Sgt. Osborne at his deposition.

16. On May 26, 2015, I contacted Mr. Rabe by telephone to meet and confer regarding the Motion. I attempted to reach some agreement with Mr.

1 Rabe that as to SBSO employees who are potential character witnesses on behalf  
 2 of Johnson, and not percipient witnesses to the events of June 17, 2013 or  
 3 witnesses regarding SBSO use of force or related training, the County would not  
 4 consider those contacts to require consent under Rule 2-100. Mr. Rabe  
 5 expressed no interest at all in trying to resolve, even in this limited way, the  
 6 issues raised by his Motion. Mr. Rabe went so far as to state that he could  
 7 directly or through his investigator contact Rockwell Ellis, a named party in the  
 8 civil action who is represented by County Counsel, and seek to interview Ellis  
 9 about the events of June 17, 2013 without first obtaining the consent of County  
 10 Counsel because he would be acting in Johnson's **criminal** case. The parties  
 11 were unable to resolve the issues raised in the Motion.

12 I declare under penalty of perjury under the laws of the United States of  
 13 America that the foregoing is true and correct.

14 Executed this 27th day of May, 2015 at Santa Barbara, California.

15  
 16  
 17 /S/ - Mary Pat Barry  
 MARY PAT BARRY